

EXHIBIT 34

IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION

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IN THE MATTER OF :
:
BEYOND SYSTEMS, INC. :
:
Plaintiff, :
:
v. : Case No.
: PJM 08 cv 0921
WORLD AVENUE USA, LLC :
:
Defendants. :
:
:
:

Thursday,
September 30, 2010
Pompano Beach, Florida

DEPOSITION OF:

DALE S. HARROD

called for examination by Counsel for the Plaintiff, pursuant to Notice of Subpoena, in the Mumbai Conference Room of the Forum Hotel,

located at 600 SW Third Street, Pompano Beach, Florida, when were present on behalf of the respective parties:

<p>Page 2</p> <p>APPEARANCES: On Behalf of the Plaintiff, Beyond Systems, Inc.:</p> <p>of: STEPHEN H. RING, ESQ. Stephen H. Ring, PC 506 Main Street Suite 215 Gaithersburg, MD 20878 Tel: (301) 563-9249 Fax: (301) 563-9639 Email: shr@ringlaw.us</p> <p>of: MICHAEL S. ROTHMAN, ESQ. Law Office of Michael Rothman 401 East Jefferson Street Suite 201 Rockville, MD 20850 Tel: (301) 251-9660 Fax: (301) 251-9610 Email: mike@mikerothman.com</p> <p>On Behalf of the Defendant, World Avenue USA:</p> <p>SANFORD M. SAUNDERS, JR., ESQ.</p> <p>of: Greenberg Traurig, LLP 2101 L Street, NW Suite 1000 Washington, DC 20037 Tel: (202) 331-3130 Fax: (202) 261-0150 Email: saunderss@gtlaw.com</p> <p>of: JOHN L. MCMANUS, ESQ. Greenberg Traurig, LLP 401 East Las Olas Boulevard Suite 2000 Fort Lauderdale, FL 33301 Tel: (954) 765-0500 Fax: (954) 765-1477 Email: mcmanusj@gtlaw.com</p>	<p>Page 4</p> <p>TABLE OF CONTENTS</p> <p>WITNESS DIRECT CROSS REDIRECT RECROSS</p> <p>DALE HARROD</p> <p>By Mr. Ring 5</p> <p>By Mr. Saunders 65</p>
<p>Page 3</p> <p>On Behalf of the Deponent, Dale Harrod:</p> <p>MARK E. STEIN, ESQ.</p> <p>Of: Higer, Lichter & Givner LLP 18305 Biscayne Boulevard Suite 402 Aventura, FL 33160 Tel: (305) 356-7550 Fax: (305) 933-9970 Email: mstein@hlglawyers.com</p> <p>ALSO PRESENT:</p> <p>CHADD SCHL叙述TER PAUL WAGNER</p>	<p>Page 5</p> <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 5:05 p.m.</p> <p>3 WHEREUPON,</p> <p>4 DALE STEPHEN HARROD</p> <p>5 having been called as a witness by Counsel for</p> <p>6 the Plaintiff, and having been duly sworn, was</p> <p>7 examined and testified as follows:</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. RING:</p> <p>10 Q Please state your full name.</p> <p>11 A Dale Stephen Harrod.</p> <p>12 Q Steven with a "V"?</p> <p>13 A P-H.</p> <p>14 Q The right way.</p> <p>15 A And where do you work?</p> <p>16 A I'm currently consulting.</p> <p>17 Q For? Do you have more than one</p> <p>18 A client?</p> <p>19 A Yes.</p> <p>20 Q Do you do any work at the present</p> <p>21 A time for a company The Useful, LLC?</p> <p>22 A No.</p>

		Page 6	Page 8
1	Q	For a company called World Avenue	1 A We would -- people opted in on the
2	USA?		2 co-registration path -- we would send them
3	A	No.	3 additional offers.
4	Q	Or a company called Niutech, LLC?	4 Q What does "opted in" mean?
5	A	No.	5 A They provided consent on the co-
6	Q	Have you in the past consulted or	6 registration path to be contacted.
7		worked for any of those three?	7 Q Was any record kept of the fact of
8	A	I worked for Niutech.	8 opting in?
9	Q	When did you start and finish?	9 A I was not in charge of the co-
10	A	August 2005 to August 2006.	10 registration path.
11	Q	In this deposition, you are	11 Q Okay. Do you know if there was a
12		represented by counsel, correct?	12 means by which that opt-in was recorded?
13	A	I am	13 A I was not in charge of the co-
14	Q	And that's Mr. Klein, seated next	14 registration path.
15		to you?	15 Q Okay. I understand you weren't in
16		MR. STEIN: Stein.	16 charge, but you might know over the lunch
17		MR. RING: I'm sorry. Stein.	17 counter or the water cooler or you might learn
18		It's Mark Stein?	18 some way. I just want to know if you have
19		THE WITNESS: Yes.	19 knowledge --
20		BY MR. RING:	20 A I do not know.
21	Q	And are you represented by any	21 Q Okay. What do you mean by the
22		attorneys other than Mr. Stein?	22 registration or co-registration path?
		Page 7	Page 9
1		MR. STEIN: You can answer the	1 A It's a series of landing pages
2		question.	2 that have offers.
3		THE WITNESS: Yes.	3 Q What's a landing page?
4		BY MR. RING:	4 A The web page that someone sees
5	Q	Who else?	5 when they click on a link.
6	A	Greenberg Taurig.	6 Q Were those landing pages -- who
7	Q	When you left Niutech in August of	7 created those landing pages?
8		'06, what position did you hold?	8 A I do not know.
9	A	Vice President of Email Marketing.	9 Q Do you know whether or not Niutech
10	Q	Did you hold any other positions	10 created those landing pages?
11		while at Niutech?	11 A I do not know.
12	A	No.	12 Q What are the offers you referred
13	Q	What were your duties as Vice	13 to a minute ago?
14		President of Email Marketing?	14 A Can you be more specific?
15	A	To run the email channeling.	15 Q Yes. You said that the co-
16	Q	Was that email sent between and	16 registration path was a series of landing
17		among people within the company or from some	17 pages with offers.
18		spot in the company to somebody outside?	18 A Uh-hum.
19	A	People external to the	19 Q I just want to know what those
20		organization.	20 offers are.
21	Q	Okay. So what does the email	21 A I wasn't in charge of the co-
22		channel mean?	22 registration path, so I don't know what offers

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1 where did you work? Was that iLeap?	1 Q Did you have any dealings with
2 A Correct.	2 anyone who worked for The Useful while you
3 Q In your work at Niutech, did you	3 were working for Niutech?
4 have occasion to communicate with Niuniu Ji?	4 A I don't know who was paid under a
5 A Yes.	5 given company. We were pretty much
6 Q How frequently?	6 encapsulated.
7 A We would meet, a minimum, once a	7 Q Niutech was?
8 month, maybe once every other week.	8 A No, the email marketing department
9 Q And why would you meet?	9 was.
10 A To discuss the financials of the	10 Q You have indicated you worked for
11 division.	11 Niutech the entire time you were there. Just
12 Q Do you know who your replacement	12 so I'm clear, did it ever occur that you
13 was when you left?	13 received a paycheck from any entity other than
14 A I do not.	14 Niutech?
15 Q Have you stayed in touch with	15 A Never.
16 anyone at Niutech since you left?	16 Q And that would apply to the entire
17 A One or two.	17 time you were employed at -- well, let's get
18 Q Who would that be?	18 an address. What physical address was the
19 A Steve Saccone.	19 location of your employer when you worked for
20 Q And who else?	20 Niutech?
21 A Eric Guimond.	21 A I don't recall the address. It
22 Q How do you spell his last name?	22 was in Boca Raton.
Page 23	Page 25
1 A G-U-I-M-O-N-D.	1 Q Was it on Broken Sound?
2 Q Do you recognize any of the	2 A I believe so.
3 following company names? World Avenue USA,	3 Q And that address did not change
4 LLC?	4 for the entire time you worked for Niutech?
5 A Yes.	5 A It did not.
6 Q And how do you recognize that?	6 Q Who was in charge of the IT
7 A I believe it was a services	7 department while you were at Niutech?
8 company established by the same proprietors of	8 A I believe it was Marty Torcy.
9 Niutech.	9 Q T-O-R?
10 Q And how do you know that?	10 A I don't know the spelling.
11 A That was the common understanding	11 Q Did anyone else besides Mr. Torcy
12 within the organization.	12 wear the hat of IT Chief or Chief Information
13 Q And did you understand that entity	13 Technology Officer? First of all, what was
14 to exist before you left Niutech?	14 his title?
15 A I believe it was just being	15 A I do not know.
16 established when I left.	16 Q Okay. Did anybody else serve as
17 Q Do you know of an entity called	17 head of the IT department besides Marty Torcy
18 The Useful, LLC?	18 during the time you worked for Niutech?
19 A Yes.	19 A Not to my recollection.
20 Q What do you understand it to be?	20 Q Was it your understanding that
21 A As I worked for Niutech, I don't	21 Marty Torcy was the Chief of the IT department
22 know what The Useful's role was.	22 for Niutech?

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<p>1 A Marty and I would meet to discuss 2 my particular needs. Past that, I don't know 3 what Marty's responsibilities were or who else 4 was responsible for technology.</p> <p>5 Q Do you know which corporation he 6 worked for?</p> <p>7 A I do not.</p> <p>8 Q Do you recall the names of any 9 people who worked in your email department 10 besides Mr. Saccone and Mr. Harrod?</p> <p>11 MR. STEIN: He's Mr. Harrod.</p> <p>12 (Laughter.)</p> <p>13 BY MR. RING:</p> <p>14 Q I'm sorry. Mr. Saccone and Mr. 15 Cardona?</p> <p>16 MR. STEIN: And I'm sorry, what I 17 heard him testify to is he's kept in touch 18 with Mr. Saccone, not that Mr. Saccone worked 19 in his email department. I don't know if he 20 did or didn't.</p> <p>21 MR. RING: Let's find out.</p> <p>22 BY MR. RING:</p>	<p>1 I recall. Okay. Any others?</p> <p>2 A No. It's been a long time.</p> <p>3 Q From what location were the emails 4 sent that were sent by the email department?</p> <p>5 And by that, I mean, what town and city? And 6 state?</p> <p>7 A Niutech, when I came onboard, did 8 not have an operational email system, and we 9 were working out the details. So we, instead 10 of acquiring servers directly, we leased them 11 to bring the system online. Also, there were 12 bandwidth considerations for the co- 13 registration path. So what city they resided 14 in, I could not tell you because we leased 15 them from any number of ISPs.</p> <p>16 Q Do you recall the names of those 17 ISPs?</p> <p>18 A Not offhand, no.</p> <p>19 Q Do you recall what period of time 20 the leasing took place?</p> <p>21 A I don't understand the question.</p> <p>22 Q You described a situation where</p>
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<p>1 Q Okay. Did Mr. Saccone work in the 2 email department while you were there?</p> <p>3 A He did.</p> <p>4 Q For what period of time?</p> <p>5 A Approximately the first six 6 months.</p> <p>7 Q And was that under you?</p> <p>8 A It was.</p> <p>9 Q And you have already mentioned Mr. 10 Cardona. Who else worked in that department?</p> <p>11 A A gentleman by the name of Ben. I 12 do not recall his last name.</p> <p>13 Q What position did he hold?</p> <p>14 A He was a programmer.</p> <p>15 Q Do you recall any other names?</p> <p>16 A Evelyn. I do not know her last 17 name.</p> <p>18 Q And her position?</p> <p>19 A I don't recall her position.</p> <p>20 Q Any others you recall?</p> <p>21 A I've already -- Eric Guimond.</p> <p>22 Q That's right, you did give me him,</p>	<p>1 Niutech did not have certain capacities, so 2 you leased servers.</p> <p>3 A Uh-hum.</p> <p>4 Q For what period of time were those 5 servers leased? Are they still being leased 6 today? At the time you left Niutech, were 7 they still being leased?</p> <p>8 A When I left, yes.</p> <p>9 Q Okay. Does Niutech or did 10 Niutech, when you were working there, maintain 11 some servers on its own premises that were 12 used for the sending of emails, as you've 13 described?</p> <p>14 A They did not have the server 15 capacity or bandwidth to do such.</p> <p>16 Q So they did not?</p> <p>17 A Correct.</p> <p>18 Q And that statement remained true 19 through the entire time you were working 20 there?</p> <p>21 A Yes.</p> <p>22 Q What records would identify the</p>

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1 website. You would select -- you would look 2 at Offer X. If you wanted to engage that 3 offer, all those assets would be present as 4 links or you would copy/paste. It would say, 5 "Approved Subject lines", "Approved From 6 lines", and they might give you two or three 7 of them to select from.	1 of email addresses for those people come from? 2 A The co-registration path. 3 Q That would be a co-registration 4 path that had generated some lead information, 5 is that correct?
8 Q Okay. Now the word "approved" is 9 a word that's applied by whom?	6 A Yes. 7 Q And that was co-owned by whom? 8 A It was owned by the company. 9 Q Niutech?
10 A The advertiser.	10 A Yes.
11 Q So the advertiser is, basically, 12 providing Niutech with pre-approved content 13 for the email?	11 Q So that list of people was part of 12 a larger list maintained by Niutech, is that 13 right?
14 A Correct.	14 A Yes.
15 Q Is that fair? Okay. And once 16 Niutech, while you were there, once Niutech 17 received this information from the advertiser, 18 then what was the next step in putting 19 together the promotion or the campaign?	15 Q Did Niutech maintain more than one 16 list? 17 A It wasn't list-based. The data 18 was stored in a database and accessed as 19 needed.
20 A We would ensure that the HTML was 21 proper and would render properly for users 22 receiving it, correct any minor structure	20 Q And that database contained lead 21 information on prospective customers, is that 22 correct?
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1 issues, while not changing the content. We 2 would, then, test it to a small group of 3 individuals to see what those metrics were.	1 A No. 2 Q What did it contain? 3 A That database contained 4 information that customers had typed in 5 themselves on the co-registration path.
4 Q What do you mean by "render 5 properly"?	6 Q And that database was used for 7 what? 8 A Well, then, in our department, 9 email marketing.
6 A If you've ever received an email 7 by which the pictures were broken or the text 8 was all together, it's not rendering or being 9 displayed to the end-user as it should.	10 Q How many emails were sent in each 11 campaign?
10 Q And what is the purpose of the 11 HTML code in the email?	12 A It varied.
12 A To display pictures and text to 13 the end-user.	13 Q From what to what?
14 Q How did -- strike that.	14 A Ten thousand to 2 million.
15 Who was the small group used for 16 the preliminary test you described?	15 Q What was the size of the 16 database --
17 A Depending upon the offer, they may 18 be a random sample of data or a targeted 19 sample of data. In the hypothetical AARP, you 20 would obviously want to engage people who were 21 older than 50 years old.	17 A I do not know. 18 Q -- in terms of number of records?
22 Q And where did the data consisting	19 A I do not know. 20 Q What was the format? 21 A I do not know. 22 Q Do you know if it was an SQL, by

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1 campaigns.	1 Q Okay. Do you know, in fact, that
2 Q And those campaigns would consist	2 there was a Publishers Services department at
3 of anywhere from 10,000 to 2 million emails	3 the time you worked at Niutech?
4 each?	4 A Yes.
5 A In the case of an email of 2	5 Q How do you know that?
6 million, then we are probably looking at 1 or	6 A In meetings with various other
7 2 million.	7 department heads it was brought up.
8 Q Per day?	8 Q And did someone from the
9 A Per day.	9 Publishers Services department attend those
10 Q Could you get out two campaigns in	10 meetings?
11 a day that consisted of 2 million emails	11 A This would have been more along
12 intentional or intended targets each?	12 the lines of Publishers Services did this type
13 A The systems were capable of it.	13 of, these numbers, those types of things, but
14 Q What systems were you talking	14 I had no direct contact with them.
15 about?	15 Q And as a result of these meetings
16 A IDEA.	16 where the word "Publishers Services" came up,
17 Q And that IDEA software was hooked	17 you did not happen to meet anyone from
18 up to servers located offsite?	18 Publishers Services?
19 A Correct.	19 A I don't recall. I don't; I just
20 MR. RING: Take a short break.	20 don't recall.
21 (Whereupon, the foregoing matter	21 Q Okay.
22 went off the record at 6:08 p.m. and went back	22 A I mean there was a lot of people
Page 63	Page 65
1 on the record at 6:10 p.m.)	1 that worked at that company.
2 BY MR. RING:	2 Q All right.
3 Q Mr. Harrod, do you know what part	3 MR. RING: Your witness.
4 of the building was occupied by the Publisher	4 MR. SAUNDERS: Give us a second.
5 Services department?	5 (Whereupon, the foregoing matter
6 A I don't know where they were	6 went off the record at 6:11 p.m. and went back
7 located.	7 on the record at 6:19 p.m.)
8 Q Do you know whether they were, in	8 CROSS-EXAMINATION
9 fact, in the same building with your	9 BY MR. SAUNDERS:
10 department?	10 Q Mr. Harrod, you mentioned that you
11 A I don't; I don't know.	11 worked for a company, iLeap?
12 Q Do you know if Niutech had any	12 A Yes.
13 other office space besides the Broken Sound	13 Q At one point in time, I think you
14 address where you worked at the time you	14 said they franchised to ISPs?
15 worked there?	15 A Correct.
16 A They had a fulfillment warehouse	16 Q Those ISPs, did they use spam
17 down the street.	17 filters?
18 Q How far down the street?	18 A Yes.
19 A Three blocks.	19 Q Common practice for ISPs to use
20 Q How do you know that?	20 spam filters?
21 A Because we had company functions	21 A Yes.
22 there.	22 Q Good practice for ISPs to use spam